

Art Unit: 1612

Claims 1-17, 19-33 and 37-38 are presented for examination.

The remarks filed on March 22, 2010 have been received and entered.

Claims 1-17, 19-33 and 37-38 are rejected under 35 U.S.C. 103 (a) as being unpatentable over WO 98/34644 in view of Chen 6,602,274 for the reasons set forth on pages 2-4 of the office action of October 21, 2009.

Applicant's arguments and remarks have been carefully considered, but are not deemed to be persuasive. Applicant's arguments regarding the effect of photodynamic therapy on the tissues beyond the treated area have been noted. The newly relied upon reference clearly teach the effect of photodynamic therapy on the tissues beyond the treated area and damage caused to such tissues by such treatment. Applicant acknowledges the prior art recognition of a need for reduction and prevention of inflammation caused by PDT, however applicant argues that there is no teachings that low dose PDT can be used for treating such inflammation. It is the examiner's position that WO Patent clearly teaches the use of low dose PDT for treating inflammation caused in the tissue. Therefore, it would have been obvious to a person skilled in the art to use a low dose PDT for the treatment of any inflammation regardless of the cause or source in the absence of evidence to the contrary. Applicant's declaration has been carefully reviewed. The declaration shows that although the inflammation caused by PDT treatment causes the possibility of tumor relapse after a single dose treatment, but taking advantage of the inflammation a double dose treatment was used. Applicant is trying to show that there would be no motivation to conclude that inflammation reaction should be treated or prevented, considering that Feritas teaches the second does of

PDT was used for the beneficial effect of the inflammation on the tumor cells. The arguments have been noted. Feritas article was published in 1991. However, the later published document such as the WO patent recognizes the need for reduction of inflammation caused by PDT in the injured and pre-injured tissues. The WO patent also teaches the use of low dose PDT for the treatment of inflammation. Therefore, it would have been obvious to a person skilled in the art to use low dose PDT for the treatment of inflammation caused by any source in the absence of evidence to the contrary.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

Art Unit: 1612

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF
/Zohreh A Fay/
Primary Examiner, Art Unit 1612